IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11209 of 2005
With
MISC.CIVIL APPLICATION No. 68 of 2005
IN
SPECIAL CIVIL APPLICATION No. 3087 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KAPILABEN ASHOKBHAI PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR AJ PATEL for Petitioner(s) : 1,
MR HL JANI, AGP for Respondent(s) : 1,
MR RM CHHAYA for Respondent(s) : 2,
None for Respondent(s) : 3,
PARTY-IN-PERSON for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
and
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 13/12/2005

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)

1. As the subject matter of the petition as well as Misc. Civil Application ['MCA' for short] is the same, they were heard together by us and now they are being disposed of by this common CAV judgment.

2. The petition is filed by Smt. Kapilaben Ashokbhai Patel, who is also opponent no. 4 in the MCA, but in this judgment she is referred to as 'the petitioner'. Applicant of the MCA is respondent no. 4 in the petition. Accordingly he is referred to as respondent no. 4 in this judgment. Rest of the parties are referred to in accordance with their position in the petition.

2.1. The petition is filed for claiming relief to the effect that appropriate direction be given to respondent no. 1 to issue notification appointing Appellate Officer/Authority for the development area of Gandhinagar township in accordance with the provisions of section 5 (1) of the Gujarat Regulation of Unauthorized Development Act, 2001 [hereinafter referred to as 'the Act']. By way of interim relief, it is prayed that the execution of order contained in communication dated 24th September, 2004 and order dated 24th September, 2004 of respondent no. 2 be stayed pending final disposal

of the petition and also to restrain the agents and servants of respondent no. 2 from taking any coercive measures against the petitioner pursuant to notice dated 9th November, 2004.

2.2. MCA has been filed by respondent no. 4 requesting this Court to take appropriate action against opponents nos. 1 to 18 under the provisions of the Contempt of Courts Act and also to order the prosecution for filing false affidavit and to direct the petitioner and the concerned authorities to remove the unauthorized construction.

3. The case of the petitioner is that she had purchased plot no. 493/2 admeasuring 181.50 sq. mtrs. situated in sector no. 22, Gandhinagar township for total consideration of Rs.4,50,000/- by a registered sale-deed. The said plot was purchased from one Ishvarsinh Baldevsinh Vaghela who had purchased the said plot at the public auction which was sanctioned by Additional Collector, Gandhinagar vide his order dated 11th February, 1976. The plot was sold to Ishvarsinh on the condition that it was to be utilized for residential purpose and accordingly he had put up construction for residential unit on the plot. It is the case of the petitioner that she converted the user from residence to commercial and constructed the existing structure on it which is a commercial one. The same was objected to by respondent no. 4 and at his instance proceedings for

violation of building regulations were initiated against the petitioner. According to petitioner, the said proceedings ended in a settlement between the parties upon payment of Rs.40,000/- to respondent no. 4 by way of damages and in view of the settlement, the Dy. Secretary, Revenue Dept. dismissed the Revision Application filed by respondent no. 4. According to the petitioner, thereafter respondent no. 3 – the Collector, Gandhinagar initiated proceedings against the petitioner for removal of the unauthorized construction put up by the petitioner on the plot in question. Against the order of Collector dated 18th March, 2000 the petitioner preferred Revision Application before respondent no. 1 i.e. the Secretary, Urban Development and Urban Housing Dept. and along with it, application for interim relief was also filed. Respondent no. 1 by order dated 15th June, 2000 rejected the application for interim relief, against which the petitioner approached this Court by filing Special Civil Appln. No. 7708 of 2000. Learned Single Judge of this Court by order dated 6th February, 2001 dismissed the petition in limine and vacated the ad-interim relief granted earlier. The petitioner preferred appeal against the order of the learned Single Judge being Letters Patent Appeal No. 110 of 2001, which was permitted to be withdrawn by the Division Bench by its order dated 20th February, 2001 to enable the petitioner to resort to remedy available to her in light of the notification of the Govt. of Gujarat dated 9th October, 2000 before the Competent Authority. In fact the petitioner by the said order had withdrawn the

main petition itself rendering the appeal meaningless.

3.1. According to the petitioner, on 27th August, 2001 she made application to the Chief Executive Officer under the provisions of the Gujarat Town Planning and Urban Development Act ['Development Act' for short] seeking approval of the construction put up on the plot in question. However, the Senior Town Planner of respondent no. 2 rejected the application by order dated 12th February, 2002. In the meanwhile respondent no. 4 also preferred Special Civil Application No. 3087 of 2001 before this Court complaining that respondent no. 3 – Collector was not taking any action against the petitioner for removing the unauthorized construction. It may be noted here that the Act came into force on 1st September, 2001. It is the say of the petitioner that a fresh application was made to respondent no. 2 for sanction of building plan on 2nd July, 2004. In view of the same, petition filed by respondent no. 4 was disposed of by the Division Bench by order dated 7th July, 2004 directing the concerned authority to decide the application of the present petitioner, who was respondent no. 4 in the said proceedings, as expeditiously as possible in accordance with law and it was further directed that if it was found that no relief could be available to respondent no. 4 i.e. the present petitioner, action to remove the unauthorized construction should be taken by the authority immediately. The respondent authority rejected application of the petitioner by order dated 24th

September, 2004 and accordingly notice was served upon the petitioner by the Junior Town Planner of respondent no. 2 authority directing petitioner to remove unauthorized construction within seven days from the date of the service of the notice and to discontinue the commercial use of the entire building. According to the petitioner, order dated 24th September, 2004 was challenged by way of Regular Civil Suit No. 318 of 2004 in the Court of the Learned Civil Judge [J.D.] at Gandhinagar. The petitioner also preferred application for interim relief at Exh. 5 which was rejected by the learned Civil Judge by order dated 19th April, 2005. Against the said order the petitioner approached the learned Presiding Officer, Fast Track Court No. 3 by filing Civil Misc. Appeal No. 33 of 2005 which was also dismissed by the learned Judge vide order dated 4th June, 2005. According to the petitioner the learned Judge, Fast Track Court dismissed the appeal on the ground that considering the facts of the case, the appropriate remedy was by way of appeal to the Appellate Authority appointed under the Act. Now it is the say of the petitioner that she has been left high and dry since respondent no. 1 has not created any Appellate Authority under the provisions of section 5 (1) of the Act. She has, therefore, approached this Court by filing the present petition.

4. The respondents have contested the petition by filing affidavit-in-reply. Mr. RS Gandhi, Senior Town Planner, Gandhinagar, has filed affidavit

which is on behalf of respondent no. 1 – State, not disputing the fact that initially a plot no. 493/2 situated in Sector No. 22, Gandhinagar township admeasuring 181.50 sq. mtrs. was purchased by Ishvarsinh Baldevsinh Vaghela in auction. According to him, the sale was attached with a condition that it was to be used only for residential purpose. He has stated that in clear violation of the said condition, commercial building has been constructed on the said plot. It is his say that the prayer of the petitioner cannot be accepted because the Act was meant for one year initially, but thereafter it was extended upto 2002 and lastly upto the year 2003. He has stated that since 2003 the Act has ceased to exist. It is his say that the petitioner cannot bank upon the provisions of this Act to get the unauthorized construction regularized. He has also produced notification showing the last extension which is dated 2nd June, 2003 extending the period prescribed for issuance of notice under section 3 (2) of the Act upto 3rd September, 2003. He has averred that after 3rd September, 2003 no application for regularization of unauthorized construction can be entertained and now there is no question of appointing Appellate Authority under the provisions of section 5 of the Act. Another affidavit has been filed by Natubhai Mevada on behalf of respondent no. 2. He is Junior Town Planner in the office of respondent no. 2. He has narrated factual aspects of the case. He has stated that upon purchase of the plot, the petitioner applied for permission to construct residential house and after scrutiny of the plans, etc. the Competent Authority

accorded its approval on 12th May, 1997. The construction proposed to be carried out comprised basement, ground floor, first floor and second floor and a cabin to cover the staircase. The total construction was to be of 185.49 sq. mtrs. after leaving the marginal land, etc. It is his say that instead of residential premises the petitioner has constructed commercial building containing 4 shops in the basement with shutters, 7 shops on the ground floor with shutters, 5 shops on the first floor with shutters and one hall on the second floor and in view of the same, the petitioner was served with notice for demolition as well as to pay the penalty He has agreed with the stand of respondent no. 1 that the Act has ceased to exist and the prayer of petitioner cannot be granted. He has further averred that merely because the final development plan for the area has been approved by the State Government on 16th February, 2004, the construction of the petitioner cannot be regularized. It is his say that though in the judgment dated 7th July, 2004 respondent authorities were required to remove the unauthorized construction, it has not become possible to do so because the petitioner has been filing litigation one after the other. It is his say that the provisions of the Act are not applicable to the area under Gandhinagar and hence there is no question of appointing Appellate Authority under the Act.

4.1. Respondent no. 4 has also filed affidavit-in-reply. He has controverted the contentions of the petitioner raised in the petition. He has in

detail narrated the terms and conditions on which the plot was originally sold to Ishvarsinh and has stated that the plot was subsequently purchased by the petitioner with all terms and conditions remaining the same. He has averred that by filing proceedings after proceedings the petitioner has avoided to make compliance with the original order of respondent no. 3 – Collector for removal of the unauthorized construction. He has also complained against the authorities for not taking action for removal of the unauthorized construction inspite of the direction of this Court and this Court making it clear that pendency of the petition would not come in the way of the authority in taking action against the petitioner. To support his say, he has quoted observations of the Division Bench made in his petition being Special Civil Application No. 3087 of 2001 in order dated 23rd June, 2004.

4.2. On the aforesaid averments the respondents have prayed that the petition be dismissed.

5. To controvert the aforesaid averments made in the affidavits-in-reply Mr. Ashokbhai Patel has filed affidavit-in-rejoinder on behalf of the petitioner. He has disputed the claim of respondent authorities that Act has ceased to have effect after September 2003 and to substantiate his say that it still exists, he has stated instance of notice having been issued to one Pandurang

Cooperative Housing Society, which is dated 10th November, 2003. It is his say that under the Act it was incumbent upon the authority i.e. respondent no. 2 to issue notice to charge the impact fee to enable the petitioner to get the construction regularized, but the same has not been done. According to him, since there was failure on the part of respondent no. 2, the petitioner had to make an application seeking approval of the unauthorized construction.

6. In view of the aforesaid rival cases, the concerned learned advocates have made submissions in support of them. Mr. AJ Patel, learned advocate appearing for the petitioner has submitted that under the provisions of section 3 (2) respondent no. 2 was required to issue notice to the petitioner, but respondent no. 2 has failed to do so, hence the petitioner on her own made application seeking regularization which was required to be granted, but the designated authority has committed error in rejecting it. He has submitted that the petitioner has been deprived of her valuable right to prefer appeal since no appellate forum has been created under section 5 of the Act. He has further submitted that the Act is applicable to areas under the Urban Development Authorities and with the creation of Gandhinagar Urban Development Authority [GUDA] - respondent no. 2 and approval of its development plan by respondent no. 1, it became applicable to Gandhinagar also. He has submitted that land was originally actually purchased by Ishvarsinh and it was not allotted

to him. The same was subsequently purchased by the petitioner, she was, therefore, absolute owner of the plot and she could utilize it for her own purpose. Lastly, he has contended that without appointment of the Appellate Authority now the petitioner has been rendered remediless. He has submitted that though the say of respondents no. 1 and 2 is that the Act has ceased to exist, they have not demonstrated how it has expired. In his submission, unless and until there is a repealing statute, the legislation survives and in the instant case no such Repeal Act is passed by respondent no. 1. He has, therefore, submitted that the reliefs claimed in the petition may be granted.

6.1. Mr. HL Jani, Ld. AGP has submitted that undisputedly the construction is illegal and the petitioner is required to remove it forthwith. He has submitted that the Act was in force upto September 2003 and now it has ceased to have effect. He has, therefore, submitted that the reliefs as prayed for by the petitioner cannot be granted.

6.2. Mr. RM Chhaya, learned advocate appearing for respondent no. 2 has also submitted on this line. He has submitted that even when the Act was in existence it did not apply to the area under Gandhinagar. He has submitted that initially the Act was introduced in the year 2001 which was for one year, but later on it was extended till September 2003 and thereafter it has become

defunct. He has, therefore, submitted that the prayer of the petitioner cannot be granted.

6.3. Respondent no. 4 has submitted that the petitioner as well as authority be directed to demolish the unauthorized construction. He has also submitted that by not complying with the direction of this Court issued in the judgment dated 7th July, 2004 the respondents - authorities have deliberately flouted the mandate of this Court. He has, therefore, prayed that on his application appropriate proceedings be initiated against all the opponents therein for holding them guilty of committing contempt of the Court and to punish them adequately.

7. Having considered the rival contentions of the parties and the submissions of the learned advocates and having perused the pleadings, it is clear that the plot of land in question originally belonged to Ishvarsinh Vaghela who purchased it in auction sale on the terms and conditions prescribed by the authority. In accordance with the said terms and conditions the plot was to be used for building residential premises. In the year 1996 it was purchased by petitioner from Ishvarsinh and she put up commercial construction thereon. It transpires from the record and even the petitioner has not seriously disputed the fact that the construction is in breach of the condition with regard to its use and

the development carried out by her on the said plot is unauthorized one. It is also clear that after the order of the Collector and the resultant notice calling upon her to remove the unauthorized construction, number of proceedings have been filed by the petitioner either before concerned authorities or before the Courts including this Court. It is also clear that in all the proceedings the petitioner has suffered set-back. The present petition is now filed seeking relief against respondents no. 1 and 2 requiring them to create Appellate Authority under the provisions of the Act.

8. Considering the aforesaid contentions of the parties, first it is necessary for us to decide whether the Act is still in existence or it has ceased to operate since September 2003. According to respondent authorities, the Act was initially introduced in the year 2001 and it was meant for one year. Later on, by issuing notifications the term was extended, at first instance upto 2002 and later on upto September 2003. Thereafter, no notification extending the term of the Act has been issued. This stand has been taken by them in view of the extension of the time limit prescribed for issuing notice under section 3 (2) (a) of the Act, only upto September 2003. It is, however, the submission of Mr. Patel that there is no positive, authentic provision repealing the Act and till such time the Act is repealed, it continues to exist. He has cited the instance of Pandurang Cooperative Housing Society; but the submission of Mr. Patel has

been hotly contested by the Ld. AGP Mr. Jani as well as Mr. RM Chhaya.

9. To appreciate this main controversy, it will be necessary for us to explore the purpose for which the Act was enacted by the legislature. To ascertain the same, we may refer to the statement of objects and reasons. Though we are not expressing any opinion whether the statement of objects and reasons for an Act is admissible as an aid to its construction, we do feel certain that it can be referred to for the limited purpose of ascertaining the conditions prevailing at the time which actuated the enacting authority to pass the law and the urgency of the exigency it sought to remedy. It is the duty of the Court of law to interpret the legislation and to find out the intention underlying the laws whose enforcement is sought through judicial authority. One of the ways in which this purpose can be achieved is to seek the aid of the statement of objects and reasons to the aforesaid extent at-least. Therefore, we reproduce the relevant portion of the same verbatim as under :-

> "On account of the rapid growth of economic opportunities in and around the major cities of Gujarat, there has been constant influx of the rural population to the urban areas resulting in steep increase in demand for properties for residential, commercial and other uses. This has resulted in feverish construction activities and, several buildings so

constructed do not conform to the existing building regulations. Consequently, in the urban areas of the State there have come up a large number of buildings which have been constructed without permission or where permission is granted, constructed in contravention of development and control regulations. The owners and occupants of such buildings have been given notices under the Bombay Provincial Municipal Corporations Act, 1949 or, as the case may be, the Gujarat Town Planning and Urban Development Act, 1976 requiring them to remove, pull down or alter the buildings. However, the owners and occupants have failed to comply with the requisition of the notice. Administratively, removal or pulling down of large number of building is neither feasible nor desirable. Removal, pulling down or alteration of buildings on a large scale is fraught with the possibility of creating law and order problem and hardship to the people as a large number of the people would be rendered homeless who would have to be provided with housing. The social and economic fabric of the society would be disturbed leading to a chaotic situation in the society. In order to avoid such a situation, intervention of the Government by enacting suitable legislation has become a compelling necessity. Faced with similar situation, some other State Governments in the country have also come out with suitable legislation for regularisation."

9.1. The aforesaid passage quoted from the statement of objects and reasons of the Act is self-explanatory. This piece of legislation has been enacted by the Government in view of the large scale construction, commercial as well as residential in the urban areas of major cities of Gujarat, carried out to meet the requirement of rapid growth in population and the resultant commercial activity in the cities due to constant influx of rural population in these areas. Most of these constructions did not conform to the standards laid down under the building laws and/or terms and conditions of permits/licences and, therefore, necessity to demolish such unauthorized construction arose. However, such large scale demolition was not feasible nor desirable considering the financial loss and the hardship to people that could be caused on account of demolition. It was also found by the Government that whenever such situation arose in other States, a suitable law was enacted by them to avert the difficult situation. In this background the Government of Gujarat also thought it essential to have the present enactment and that is how the Act has come into force. It is, therefore, necessary for us to find out whether the exigency requiring the enactment of the Act is over and whether the said legislation has expired.

9.2. To answer these questions, we may revert to the notification of

the State Government containing Bill of the Act to acquaint ourselves with the chronological events by which the Act has been brought into force. Considering the emergency the Gujarat Regularization of Unauthorized Development Ordinance, 2000 was promulgated on 22nd November, 2000 to regularize the unauthorized development in the urban areas of the State. This was done as the Gujarat Legislative Assembly was not in session. Thereafter, the Gujarat Legislative Assembly was summoned to meet on the 19th March, 2001, but the said Ordinance could not be replaced by Act of the State Legislature for want of time since by virtue of sub-clause (a) of clause (ii) of Article 213 of the Constitution of India; the said Ordinance would have ceased to operate after the 29th April, 2001, the date on which the period of six weeks from the date of re-assembling of the Gujarat Legislative Assembly expired. Therefore, it was expedient to take immediate action to continue the operation of the provisions of the said Ordinance and the Gujarat Regularization of Unauthorized Development Ordinance, 2001 was promulgated to achieve the aforesaid objects since even at that time the Gujarat Legislative assembly was not in session. Thereafter, the Gujarat Regularization of Unauthorized Development bill, 2001 [Gujarat Bill No. 17 of 2001] was introduced in the Gujarat Legislative Assembly and it was published in Gujarat Government Gazette, Extraordinary on 24th July, 2001. It thereafter got transformed into the Act after receiving the assent of the Governor on 1st September, 2001. The Act was first

published in the Gujarat Government Gazette Extraordinary on 1st September, 2001. These events show that the present legislation has been created on emergency basis so as to avoid or tackle the situation that may have required demolition of large scale unauthorized development.

9.3. The subsequent events can be appreciated in better way after provisions of the Act are perused closely. Some of the relevant provisions of the Act are as under :-

> "Section 1. (1) This Act may be called the Gujarat Regularisation of Unauthorised Development Act, 2001
>
> (2) It shall be deemed to have come into force on the 22nd November, 2000.
>
> Section 2 defines certain terms :-
>
> (1) In this Act, unless the context otherwise requires,-
>
> (a) "area development authority" means the authority constituted under section 5 of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter in this section referred to as "the Gujarat Act");
>
> (b) xxx xxx xxx xxx
>
> (c) "designated authority" means the Commissioner, the area development authority or, as the case may be, urban development authority;
>
> (d) xxx xxx xxx xxx
>
> (e) "development area" shall have the meaning assigned to it in clause (ix) of section of the Gujarat Act;
>
> (f) "prescribed" means prescribed by rules made under section 9;

(g) xxx xxx xxx xxx

(h) "urban development authority" shall have the meaning assigned to it in clause (xxviii) of section 2 of the Gujarat Act.

(2) Development shall be deemed to be unauthorised if no permission of authority competent to give such permission is obtained therefor, or having obtained such permission, the development is in contravention of the relevant law or of such permission."

9.3.1. Section 3 deals with regularization of unauthorized development and the provisions relating to issuance of notice, etc. and section 5 deals with appeals. Since these sections are important to decide the controversies involved in these proceedings, it is necessary to reproduce them whole :

"3. (1)(a) A notice issued to a person under the relevant law at any time before the 22nd November, 2000 requiring such person to remove or pull down or alter unauthorised development carried out, owned or occupied by him; or

(b) any order issued or decision taken under the relevant law at any time before the 28th April, 2001, the date on which the Gujarat Regularisation of Unauthorised Development Ordinance, 2001 was first published, directing removal or pulling down or alteration of unauthorised development carried out, owned or occupied by a person,

shall__

(i) in the case of (a) be deemed to have stood suspended with effect on and from the 22nd November, 2000, and

(ii) in the case of (b) be deemed to have stood suspended with effect on and from the 28th April, 2001,

unless and until such notice, order or decision stands revived under sub-section (5).

(2) (a) Notwithstanding anything contained in the relevant law or in the order issued or the decision taken under the relevant law, directing removal, pulling down or alteration of unauthorised development, where in the opinion of the designated authority__

(i) a person has, at any time before the 22nd November, 2000 carried out any unauthorised development in urban development area or development area, and

(ii) such unauthorised development may, having regard to the provisions of section 4, be regularised,

the designated authority may, within such period and in such manner as may be prescribed, serve on the person a notice requiring him within such period not being less than a month as may be specified therein to comply with such requisitions made under section 4 and specified therein and to pay to the designated authority such fees per square metre of each category of unauthorised development as may, subject to the provisos, be determined by the designated authority and specified therein;

Provided that the designated authority shall fix fees, subject to the maxima and the minima specified in the Table below:

Provided further that different rates of fees may be determined by the designated authority for different categories or unauthorised development in different areas and for different unauthorised uses.

(b) It shall be lawful for the designated authority to form the opinion referred to in clause (a) either on the basis of information available with it or an application made to it by a person who has carried out or who owns or occupies the unauthorised development.

[c] The designated authority, shall, as soon as may be, after service of notice to a person under clause (a), cause the substance thereof to be published for the information of the public, in such manner as may be prescribed.

3 (a) Subject to the provisions of clause (b), upon the compliance of requisitions made under section 4 and specified in the notice, to the satisfaction of the designated authority and on the payment of fees under sub-section (2), such development shall cease to be unauthorised and a certificate to that effect shall be issued to the person by the designated authority in such form as may be prescribed.

B (i) The designated authority shall, before receiving the fees and issuing of the certificate under clause (a), consult a committee of experts consisting of three persons, who have knowledge of and experience in structural engineering, fire fighting and town planning respectively, constituted by the designated authority, on the question as to whether the person has, while complying the requisitions complied with the fire safety measures and structural stability requirements as per the National Building Code and the Indian Standard Specifications for the time being in force and it shall be the duty of the committee to advise the designated authority on the question so referred.

(ii) The Committee shall follow such procedure for disposal of its

business as may be determined by the designated authority.

(4) An amount deposited by a person with the municipal corporation of a city, the area development authority or, as the case may be, the urban area development authority against unauthorised development shall be set off against the fees to be paid by him under sub-section (2).

(5) Where no notice is served upon a person under sub-section (2) within the period prescribed under that sub-section or where a notice is served upon a person under sub-section (2) but a certificate is not obtained by him under sub-section (3) within such period as may be prescribed, the notice, order or, as the case may be, decision referred to in sub-section (1) shall stand revived."

9.3.2. Section 4 deals with circumstances in which unauthorized development may or may not be regularized. Sub-section 3 (1) and (2) prohibit regularization of certain types of unauthorized development. Clauses (i) to (iv) of sub-section (1) comprise categories of land on which regularization of unauthorized development cannot be permitted. Clause (v) prohibits regularization of unauthorized development on water courses and water bodies like river beds, tanks, etc. whereas clause (vi) prohibits area earmarked for the purpose of obnoxious and hazardous industrial development. Sub-sections (3) and (4) of section 4 prescribe the matters in respect of which the unauthorized development may be regularized by the designated authority subject to compliance of requisitions as contained in this section and specified in the notice by it.

9.3.3. Section 5 provides for appeal.

"(1) Any person aggrieved by the notice served upon him or notice published under sub-section (2) of section 3 may, within sixty days from the date of the receipt or, as the case may be, the publication of the notice, prefer an appeal to an Appellate Officer, who shall be a person who has held the office of District Judge for a period not less than three years and appointed in this behalf by the State Government for each City or development area:

Provided that the Appellate Officer may entertain the appeal after the expiry of the said period of sixty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the Appellate Officer may, after giving the appellant an opportunity of being heard, pass an order modifying or cancelling the notice as expeditiously as possible.

(3) The decision of the Appellate Officer under sub-section (2) shall be final and shall not be questioned in any Court of law.

(4) No appeal under this section by a person who is served with the notice shall be entertained by the Appellate Officer unless the amount of fees payable by him under the notice is deposited with the designated authority:

Provided that where in the opinion of the Appellate Officer deposit of the amount by the appellant is likely to cause undue hardship to him, the Appellate Officer may in his discretion unconditionally or

subject to such conditions as he may think fit to impose, dispense with a part of the amount deposited so however that the part of amount so dispensed with shall not exceed fifty per cent of the amount deposited or required to be deposited.

(5) The Appellate Officer shall receive from the Municipal Fund of the Municipal Corporation of the City or, as the case may be, the Fund of the area development authority or the urban development authority, such monthly salary and allowances as the State Government may from time to time after consultation with the Corporation of the City or, as the case may be, the authority of the development area for which he is appointed, determine.

Explanation_ For the purposes of this section, the expression "City" shall have the meaning assigned to it in clause (8) of section 2 of the Bombay Provincial Municipal Corporations Act, 1949."

9.3.4. Section 9 authorises the State Government to frame rules under the Act to enable the designated authority to carry out the purposes of this Act.

"9.(1) The State Government may, by notification in the Official Gazette, and subject to condition of previous publication, make rules for carrying out the purposes of this Act :

Provided that if the State Government is satisfied that circumstances exist which render it necessary to take immediate action, it may dispense with the previous publication of any rule to be made under this Act.

(2) In particular and without prejudice to the generality of the foregoing provisions such rules may provide for all or any of the following matters, namely : --

(a) the period within which and the manner in which a notice shall be served under sub-section (2) of section 3 and the manner of publication of substance of notice under clause (c) of that sub-section;
(b) the form in which a certificate shall be issued under sub-section (3) of section 3;
(c) the period within which a certificate shall be obtained under sub-section (3) of section 3;
(d) any other matter, which is to be or may be prescribed.

(3) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made, and shall be subject to rescission by the State Legislature or to such modification as the State Legislature may make, during the sessions in which they are so laid or the session immediately following.

(4) Any rescission or modification so made by the State Legislature shall be published in the Official Gazette, and shall thereupon take effect."

9.3.5. Section 10 contains the provisions with regard to repeal and savings.

"(1) The Gujarat Regularisation of Unauthorised Development

Ordinance, 2001 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under this Act."

10. Having quoted some of the relevant provisions of the Act, it is necessary for us to refer to and reproduce certain provisions of the rules framed under the Act. These rules have been framed by the Government of Gujarat while exercising the powers conferred upon it under section 9. They are known as 'Gujarat Regularization of Unauthorized Development Rules, 2001 [hereinafter referred to as 'the Rules']. They have been published in the Government of Gujarat Gazette, Extraordinary as per the requirement of sub-section (1) of section 9 of the Act, on 4th September, 2001. Rule 3 prescribes the procedure and the form in which notice for regularization of unauthorized development has to be issued under sub-section (2) of section 3 of the Act. Rules 3, 5 and 7 are as under :-

"**3. Notice for regularisation of unauthorised development :-**

(1) The designated authority shall serve a notice in Form - "A" under sub-section (2) of section 3, within a period of six months from the date of commencement of these rules for the purose of regularisation of unauthorised development requiring him to comply with the requisition

provided in section 4 and specified in the notice, within a period of sixty days:

Provided that on a request made by the designated authority, for extending the period of serving such notice, stating the reasons thereof, the State Government may, after due consideration, by an order issued in this behalf, extend such time limit which shall not exceed a further period of six months.

(2) After issuing the notice under sub-rule (1), the designated authority shall, within thirty days from the issuance of such notice, affix the notice at prominent places in the area where such unauthorised development is situated and, invite the objections and suggestions thereon.

(3) After considering the objections and suggestions received on the notice issued under sub-rule (2), the designated authority shall pass an appropriate order within ninety days from the date of receipt of compliance of the notice issued under sub-rule (1).

(4) Where a notice is served under sub-rule (1) and procedure is concluded under sub-rules (2) and (3) and the person intends to comply with the requisition specified therein, and has made a request in writing to the designated authority to allow the payment by way of instalment, the designated authority may pass such order as it deems fit for payment of such fees in monthly instalment, not exceeding twelve in number.

(5) The calculation and the procedure of setting off the amount of deposit, if any, already deposited by the person before or after the commencement of this Act against unauthorised development, shall be determined by the designated authority under section 3.

5. Application by a person for the regularisation of unauthorised development :- A person who desires to apply on his own for regularisation of unauthorised development shall make an application to the designated authority in Form - "C" along with Form - "D", and the designated authority while considering such application shall folow the procedure as prescribed in rules 3 and 4.

7. Certificate of regularisation :- The designated authority if satisfied with the person who has complied with the requirement under these rules and has paid the fees as laid down in rule 6, shall issue a certificate in Form "E", under his signature and seal of the office, for regularisation of unauthorised development.

10.1. At this juncture we may with regret note that the Act as well as the Rules have been amended several times, but unfortunately none of the advocates appearing for the parties has drawn our attention to this. Of-course the compilation submitted by Mr. RM Chhaya contains notifications whereby the Act and the Rules have been amended, but no specific mention was made about these notifications by any of the advocates. It is while going through the compilation we came across these notifications and, therefore, we have thought it fit to make a mention about the same in the judgment. Unfortunately the copies that were provided to us of these notifications were not legible at places and, therefore, we have referred to the original notifications, which show that

by Gujarat Regularisation of Unauthorized Development [Amendment] Act, 2002, several amendments have been introduced. There is amendment to sub-section (2) of section 3 and after clause (a) thereof, new clause (aa) has been inserted. It is introduced keeping in view large scale destruction that was caused on account of the devastating earthquake that occurred on 26th January, 2001. By virtue of this amendment, the designated authority is empowered to regularize, having regard to section 4 of the Act, the unauthorized development in urban area which had been carried out prior to 26th November, 2000 and which had been wholly destroyed or rendered substantially and permanently unfit for the purpose of occupation due to earthquake and the occupier or the owner intended to raise the construction or development in the same manner as it existed prior to destruction and make order authorizing such development on the conditions that may be prescribed by it. Of-course for regularization no impact fee is permitted to be charged by the designated authority.

10.2. As a consequence of the newly inserted clause (aa), amendment to section 5, which deals with appeal, is also made, which is as follows :-

> "(i) Any person aggrieved by the notice served upon him or notice published under sub-section (2) of section 3 may, within sixty days from the date of the receipt or, as the case may be, the publication of the notice, or

(ii) the owner or occupier aggrieved by an order made under clause (aa) of sub-section (2) of section 3, may, within sixty days from the date of the order,

prefer an appeal to an Appellate Officer, who shall be a person who has held the office of District Judge for a period not less than three years and appointed in this behalf by the State Government for each City or development area :

Provided that the Appellate Officer may entertain the appeal after the expiry of the said period of sixty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time."

The original section 5 has now become sub-section 5 (1). Since rule also required amendment, the provision empowering the authority, namely, section 9 is also amended. These amendments are purely in relation to the unauthorized development as referred to in clause (aa) of sub-section (2) of section 3. There is yet another amendment to section 3 of the Act made vide Gujarat Regularisation of Unauthorized Development [Amendment] Act, 2003. This amendment is mainly relating to the fees to be charged for regularization. After section 3 section 3 (a) (1) and (2) have been inserted and there is amendment to section 4 also. However, these amendments are not relevant for the purpose of deciding this petition and hence we do not mention the same in detail.

10.3. So far the Rules are concerned, in rule 5 amendment is made and

original rule 5 by virtue of the amendment has now become rule 5 (1) but the contents have remained the same. After it, rule 5 (2) has been introduced, which prescribes that a person desiring regularization of intended unauthorized development under clause (aa) of sub-section 2 of section 3 has to make an application in Form "CC" along with Form "F". After rule 6, rule 6A is inserted and it refers to grant of permission to allow reconstruction of the unauthorized development destroyed in the earthquake, in Form "DD". So far rule 7 is concerned, it has now become rule 7 (1), but the contents have remained the same. Its sub-rule (2) has been introduced whereby the designated authority is required to issue certificate in Form "EE". Designated authority has to issue certificate in Form EE to owner or occupier who has applied under clause (aa) of sub-section (2) of section 3 of the Act. Thus, it could be seen that these amendments have not affected the original scheme of the Act, but has given additional power to the designated authority to regularize the unauthorized development as referred to in clause (aa). So far the present petition is concerned, this is not a case which could be governed under clause (aa). It will stand governed by the provisions of the Act as they originally stood and which, except for the renumbering, have not undergone any change. We also make it clear that the views expressed by us in this judgment relate to such cases alone and any observation made in relation to the amended provisions; it may only be incidental to the main discussion and nothing more than that.

11. The aforesaid provisions of the Act as well as of the Rules clearly show that to set the process of regularization in motion, the designated authority is required to serve a notice within the period and in the manner prescribed under the Rules. Issuance of the notice is envisaged under sub-section (2) of section 3 of the Act. The notice is to be issued to a person requiring him, within such period not being less than a month, as may be specified therein, to comply with such requisitions made under section 4 and also as specified in the notice and to pay to the designated authority the fees to be determined by it in accordance with the provisions of the Act. Clause (b) of sub-section (2) of section 3 makes it lawful for the designated authority to form the opinion referred to in clause (a) either on the basis of information available with it or on application made to it by a person who has carried out or who owns or occupies the unauthorized development. So far notice referred to above is concerned, the relevant rule i.e. rule 3 makes it mandatory for the designated authority to serve notice to such person in Form "A" within a period of six months from the date of commencement of the Rules for the purpose of regularization of unauthorized development requiring him to comply with requisitions provided in section 4 and specified in the notice within a period of 60 days. So far application to be made to the designated authority by a person who has carried out or who owns or occupies unauthorized development is concerned, it appears

that, unlike in the case of notice, the Act does not contain any specific provision enabling such person to make an application, but such provision can as well be inferred from the fact that in clause (b) the designated authority is empowered to take into consideration the information contained in the application made to it by such person. So far the Rules are concerned, there is rule 5 which requires a person desiring on his own for regularization of his unauthorized development to make an application to the designated authority in Form "C" along with Form "D" and the designated authority while considering such application is required to follow the procedure as prescribed in rules 3 and 4. In the Act opportunity has been provided to the residents of locality in which the unauthorized development has taken place and which is sought to be regularized, to submit their objections. The designated authority is required to affix the notice at prominent places in the area where unauthorized development is situated to invite objections and suggestions thereon within 30 days from the issuance of such notice. After considering the objections and suggestions received from the residents of such area within 90 days from the date of receipt of compliance of the notice, the designated authority has to pass an appropriate order. Thus, these provisions clearly show that there is a time bound procedure provided under the Act and the Rules. However, unlike the time limit prescribed for the designated authority under sub-section (2) of section 3 no specific time limit is prescribed for such person to make an application. But

since there is no specific provision enabling such person to make necessary application, such right can be exercised by such person in conformity and in consonance with other provisions of the Act as well as Rules. This is more so in view of the entire situation or the background in which the Act and the Rules have been brought into existence. They have been enacted and framed, as can be seen from the statement of objects and reasons, to tackle the problematic situation which was already in existence and that is the precise reason why the legislature has prescribed certain time limit to give effect to the objects of this Act by issuing notice within six months from the date of commencement of the Rules or within such time that may be extended by the Government by issuing notification. When such time constraint has been imposed upon the designated authority, it will equally apply to the case where a person has chosen to make an application without waiting for receipt or publication of the notice. This would mean that a person desiring to make an application on his own for regularization of his unauthorized development shall have to make application in accordance with the scheme of the Act, at-least within reasonable time if not in accordance with the provisions of rule 3, but the reasonableness has to be judged or assessed in light of the aforesaid provisions prescribing time limits for different stages for the designated authority and in particular time limit prescribed for serving notice under section 3 (2) of the Act.

11.1. The scheme of the Act further shows that if the designated authority is of the opinion that a person has at any time before 22nd November, 2000 carried out any unauthorized development in urban development area or development area and that such unauthorized development requires regularization, subject to the provisions of section 4, he will issue notice to such person within such period and in such manner that may be prescribed requiring the concerned person to comply with certain requirements. Clause (ii) of sub-section 2 (a) of section 3 prescribes that it will be lawful for the designated authority to form such opinion either on the basis of the information available with it or from an application made to it by a person who has carried out unauthorized construction. Therefore, either on the information received by it or on the application submitted by the concerned person referred to above, if the designated authority is of the opinion that notice is required to be issued, it will do so in accordance with the provisions made with regard to the time limit and the manner in which it has to be issued. From clauses (a) and (b) of sub-section (2) of section 3 it becomes clear that unless the requisite opinion is formed, the designated authority is not required to issue notice. Further while forming the opinion it has also to keep in view the provisions of section 4 and unless it finds that the case is fit for issuance of notice it will not do so. First part of sub-section (5) states "where no notice is served upon a person under sub-section (2) within the period prescribed under that sub-section," would also

mean that the authority is not required to issue notice in each and every case of unauthorized construction and it has to exercise the discretion keeping in view the facts and circumstances of each case. However, the fact remains that even when an application is made by a person for regularization of unauthorized construction to the designated authority, it is not incumbent upon it to issue notice. It is only when it forms the opinion on the basis of the information supplied in such application satisfying the requirements under sub clauses (i) and (ii) of sub-section (2) (a), it will issue notice. Rule 5 of the Rules prescribes that whenever a person who desires to apply on his own for regularization of unauthorized development, shall make an application to the designated authority in Form "C" along with Form "D" and the designated authority while considering such application shall follow the procedure as prescribed in rules 3 and 4. Rule 3 deals with notice for regularization of unauthorized development; while rule 4 deals with notice in case where unauthorized development is carried out in parking space and sanitary facility.

11.2. It further appears that even in the case where a person has made application on his own, the designated authority, after forming the requisite opinion, will have to issue notice to such person under section 3(2) of the Act. A conjoint reading of section 3 (2)(a), (b) and (c)and Rule 3, in particular sub-rule (1)(2 and (3) thereof, shows that the designated authority will have to form

opinion on the basis of information as indicated in clause (c), issue notice to a person owning or occupying unauthorised construction, directing him to make compliance of requisitions made under section 4 and specified therein and also to pay fee as indicated in the notice. The designated authority is further required to invite objections and suggestions on the proposed regularization and to consider them before taking any decision in this behalf. This cannot be done unless substance of the notice is published in accordance with clause (c). Rule 3 (4) enables a person to pray for installment for making payment of fees; but that is only possible when notice is issued in accordance with sub-rule (1) and procedure prescribed under sub-rules (2) and (3) is over. These are common provisions and there are no separate provisions prescribing either same, similar or different procedure for a person making application on his own. When a conjoint reading of the concerned rules and provisions of section 3 (2) is made, it shows that the designated authority even after receiving such application can refuse to issue notice and if the first step of issuance of notice is not taken, obviously the subsequent steps as prescribed under the said section and said rules are not required to be followed.

11.3. Naturally, when the notice is required to be issued, it has to be done within the prescribed time limit as provided under rule 3 of the Rules. When the application is made, the designated authority will have to issue notice

in accordance with sub-rule (1) of rule 3, which would mean that notice has to be issued either within the period of 6 months from the date of commencement of the Rules or within the period extended subsequently for this purpose. If any application is made after the expiry of the time limit prescribed for issuance of notice under section 3 (2) (a) of the Act, the designated authority can even refuse to take cognizance of such application. In the instant case whether the designated authority could have taken cognizance of such application, we will presently deal with the same when we deal with the controversies in light of the facts of the case.

11.4. It may also be noted here that section 5 of the Act deals with appeal, sub-section (1) thereof provides that any person aggrieved by the notice served upon him or notice published under sub-section (2) of section 3 may within 60 days from the date of receipt or as the case may be, the publication of the notice, prefer an appeal to an Appellate Officer. Proviso to sub-section (1) enables the Appellate Officer to condone the delay caused in filing appeal after prescribed period of limitation. Sub-section (2) provides that the Appellate Officer may after giving the appellant an opportunity of being heard, pass an order modifying or cancelling the notice as expeditiously as possible. These two sub-sections, therefore, clearly show that only if a person is aggrieved by the notice served upon him or published under sub-section (2) of section 3, he can

approach the Appellate Officer by filing appeal within prescribed time limit. The Appellate Officer is empowered to grant such person hearing and also to pass an order modifying or cancelling the notice. Again these provisions clearly show that it is only the service or publication of the notice that can be challenged in appeal and the Appellate Officer is only conferred the power to modify or to cancel such notice and nothing further than that. In our opinion, therefore, the decision of the designated authority not to issue notice and thereby refuse regularization cannot be challenged before the Appellate Officer. Even in Form A which is prescribed for notice for regularization of unauthorized development in accordance with rule 3, it is stated that if the concerned person is aggrieved by the said notice, he could prefer an appeal to the Appellate Officer appointed under section 5 of the Act within a period of 60 days from the date of the receipt of the said notice. Thus, there is no scope for any doubt that it is only the notice that can be challenged in appeal and the relief that can be granted by the Appellate Officer in such appeal can be of modification or cancellation of notice alone. At this juncture it would also be necessary to refer to provision of sub-rule (4) of rule 3, which states that where a notice is served under sub-rule (1) and procedure is concluded under sub-rules (2) and (3) and the person intends to comply with requisition specified therein and has made a request in writing to the designated authority to allow payment by way of installment, the authority may pass such order as it demands for

payment of such fees. Thus, sub-rule (4) shows that after first three stages, namely the service of notice under sub-rule (1) and compliance of procedure under sub-rules (2) and (3) are over, the designated authority can pass appropriate order with regard to payment. Thus two distinct terms, namely "*notice"* and "*order*" have been used in the provisions of the Act as well as the Rules. There is no provision in the Act which can enable a person whose application for regularization is rejected to challenge such order of the designated authority before the appellate officer. May be that the object of this legislation is to regularize unauthorized construction, but the discretion to refuse regularization is also conferred upon the designated authority. Decision with regard to regularization can only be taken by the designated authority after taking into consideration the suggestions and objections that may be received by it pursuant to the publication of the notice under sub-section (2) of section 3 and keeping in view the provisions of section 4 of the Act and also after consulting the Committee and receiving its opinion whether the person has complied with fire safety measures and structural stability requirements as per the National Building Code and the Indian Standard Specifications. Only thereafter it will issue certificate under sub-section (3)(a) and the development will then ceased to be unauthorized one. It is not required to regularize each and every unauthorized construction. Therefore, when section 5 prescribes appeal against notice alone, there is no scope for any other meaning and to

extend the provision to, or construe the same in the manner as would, include even order passed on application seeking regularization by owner or occupier of unauthorized construction, refusing the regularization. We are, therefore, of the opinion that when the regularization is refused on application made in accordance with Rule 5, it cannot be subjected to further challenge. The words of provisions of section 5 are very clear and they are susceptible to only one meaning and no alternative construction is reasonably open. When that is so, the effect must be given to such provision irrespective of the consequences. It has been observed by the Apex Court in the case of COMMISSIONER OF INCOME TAX v/s. BUDHRAJA & CO. reported in AIR 1993 S.C. 2529 as under :-

> "The object oriented approach, however, cannot be carried to the extent of doing violence to the plain language used by re-writing the section or substituting words in places of actual words used by the legislature."

Incidentally we may also refer to clause (aa) of sub-section (2) of section 3, which enables a person or occupier whose unauthorized development has been destroyed or rendered unfit for occupation in the earthquake, to make an application for regularization of the development that may be carried out in the same manner as it existed prior to the destruction. The designated authority is

empowered to pass order on such application. So far the amended provision of clause (ii) of sub-section (1) of section 5 is concerned, it gives right to such owner or occupier to prefer an appeal against the adverse order to the Appellate Officer within the time limit prescribed therein. Thus, in clause (i) and clause (ii) of sub-section (1) of section 5 the subject matter and the category of persons who can challenge the decision of the designated authority are mentioned, but in neither of these clauses a person making application on his own in accordance with Rule 5 in Form C along with Form D read with section 3 (2) (a) of the Act is covered. This would also strengthen our view stated above in respect of appeal under section 5.

12. In view of the aforesaid discussion with regard to the scheme of the Act, now we will proceed to examine the controversies raised in this petition in the factual scenario of the case and will decide whether in the facts and circumstances of the case and in view of the aforesaid legal position, the same can be decided in favour of the petitioner and the reliefs that have been prayed for can be granted. First we would record some of the events chronologically so as to ascertain whether application made by the petitioner was at a belated stage, particularly when, as already discussed above, considering the exigency and the situation prevailing at the relevant point of time, the time bound procedure has been prescribed under the Act. The

unauthorized construction of the petitioner is situated in the area under the jurisdiction of respondent no. 2 i.e. Gandhinagar Urban Development Authority. Respondent no. 2 was constituted in March 1996 as can be seen from the foreword to a publication issued by respondent no. 2 itself on General Development Control Regularizations ["GDCR' for short]. Copy of the said publication has been furnished to us by the learned counsel of respondent no. 2 Mr. Chhaya for our ready reference. It is a Government publication and hence authentic one. Respondent no. 2 has been created under the provisions of the Gujarat Town Planning and Urban Development Act, 1976. The GDCR came into force with effect from 9th October, 2000. The Act came into force on 22nd November, 2000 and it was published in the Government of Gujarat Gazette on 1st November, 2001. The petitioner, as stated above, withdrew the proceedings of Letters Patent Appeal No. 110 of 2001 and Special Civil Application No. 7708 of 2000 on 20th February, 2001 with a view to make an application to respondent no. 2 since the GDCR came into force in October 2000. The petitioner made application under the provisions of GDCR on 27th August, 2001 for development of land bearing plot no. 493/2 in Gandhinagar. Though ostensibly it was an application for development of the land, in reality it was an application for approval of the construction that was already made on the said land. Even in the application it was so indicated. The said application was, however, rejected by the Senior Town Planner of respondent no. 2 by his order

which was communicated to the petitioner by forwarding letter dated 12th February, 2002. The State Government by notification dated 16th February, 2004 approved the development plan for the Gandhinagar area submitted by respondent no. 2. It was submitted by Mr. Patel, learned advocate for the petitioner that it was only after the plan was approved, the petitioner could make application under the provisions of the Act on 2nd July, 2004. It may also be pertinent to note that it is the submission of the petitioner that the Act is applicable to any urban development authority created under the provisions of the Gujarat Town Planning and Urban Development Act and hence to area under GUDA. If that be so, the petitioner could have made the application under the Act as soon as the Act was introduced. That has not been done and the application under the Act came to be made only on 2nd July, 2004. Be that as it may, the said application was, however, turned down by the concerned officer of the respondent no. 2 by order dated 24th September, 2004 and called upon the petitioner to remove the unauthorized construction. As already stated above, respondent no. 1 by notification dated 2nd June, 2003 granted last extension and extended the time limit for issuance/service of notice under section 3 sub-section (2) of the Act upto 3rd September 2003.

12.1. We have already opined that even upon an application submitted by a person who desires to seek regularization of unauthorized construction

notice has to be issued under sub-section (2) of section 3 if in the opinion of the designated authority requirements of clauses (i) and (ii) of said sub-section are satisfied. Thus, when the application is preferred by such person after the expiry of the time limit prescribed for issuance of notice, it becomes meaningless since the designated authority ceases to have any power to issue notice under sub-section (2) of section 3. In the instant case, the application has been made almost after 10 months of the expiry of the last extension to issue notice under section 3 (2) of the Act. Thus, even if it is assumed that the Act is applicable to area under respondent no. 2, the said application could not have been entertained by respondent no. 2 in the capacity of the designated authority. It is true that even otherwise also by order dated 24th September, 2004, the Junior Town Planner of respondent no. 2, after taking into consideration various documents including orders of this Court, the notifications and the orders of the Government and the different authorities, has come to the conclusion that in view of section 4 (1) (ii) of the Act regularization cannot be granted because the same has been utilized for purpose other than the specific purpose for which it was allotted by respondent no. 1 to its original owner and which was purchased on the same terms and conditions by the petitioners.

12.2. So far the main grievance of the petitioner is concerned, namely that she has been left remedy-less because there is no appellate authority

constituted for area under respondent no. 2, we also do not see any merit in this submission because as already discussed above, the Act does not provide for any appeal against such order. When the order which is against the petitioner cannot be amenable to provisions of section 5 of the Act, there is no need for us to consider her prayer for issuing appropriate direction on respondent no. 2 to create appellate forum for Gandhinagar area.

12.3. It may also be noted here that the entire Act is meant for regularization of the unauthorized construction and issuance of notice for that purpose under section 3 (2) is mandatory and the manner and the time limit in which the notice could be issued and served on concerned person are also mandatory in nature. When the entire Act revolves round these provisions, it becomes almost defunct or meaningless after the prescribed period is over. Issuance of notice for regularization of existing unauthorized development is sine-qua-non and when the period for issuance of notice by designated authority is over, all the subsequent steps come to a grinding halt except the proceedings of appeals under section 5 (1)(i) and (ii) which may be pending under the Act. The rest of the provisions of the Act relating to notice have now been rendered meaningless after the last extended time limit expired in September 2003. Entire machinery prescribed under the Act cannot get momentum without notice and after the time limit prescribed for notice under sub-section (2) of

section 3 is over, no notice can be issued. The provisions relating to notice under section 3 (2) (a) and the provisions incidental thereto except the appeal, will merely have a lifeless existence in the statute book.

12.4. We may, at this stage, refer to a decision that has been cited before us by Mr. Chhaya which is rendered by the Division Bench of this Court dated 7th April, 2005 in the letters Patent Appeal No. 285 of 2005 wherein it has been observed as under :-

> "Shri Amit Panchal made strenuous efforts to persuade us to entertain the appellant's plea of discrimination and his prayer for being allowed to continue to enjoy the fruits of illegal construction, but we have not felt persuaded to agree with him. The concept of planned development of every urban, semi urban or rural area envisages that all constructions are made strictly in accordance with the master plan, zoning plan and the sanction given by the competent authority. It is in larger public interest that no construction is allowed to be made in violation of the master plan or zoning plan or the sanctioned building plan. Needless to say that illegal or unauthorised construction causes grievous injury to the public at large inasmuch as the common man is deprived of the benefit of a planned development of urban, semi urban or rural area. Regularisation of such construction is anathema to concept of rule of law and encourage law breakers to take law into their own hand. It is therefore high time for the State to seriously consider the issue of imposing a total ban on the regularisation of any construction made in violation of the master plan, zoning plan and sanctioned building plan.

> In the light of what we have observed above, we are not inclined to entertain the appellant's prayer for stay of the proposed demolition of illegal construction. At the same time, we deem it proper to ensure that his unfounded plea of discrimination is also taken care by the public authority, namely, Mehsana Municipality, which is entrusted with the task of ensuring that no one is allowed to raise illegal or unauthorised construction. ...."

Mr. Chhaya has submitted that on the basis of these observations, the request for application of the Act to urban development area under Mehsana was not acceded to by the Division Bench, and in similar way request for the Act's application to development area under Gandhinagar Township can also be turned down. However, in view of the foregoing discussion, it will not be necessary for us to decide the question whether the Act applies to area under Gandhinagar.

13. Before we conclude our discussion on the petition, we may also refer to the judgments cited before us by Mr. Patel in support of his case. He has placed reliance on the judgment of the Apex Court rendered in the case of K.K. GUPTA v/s. JAMMU & KASHMIR SPECIAL TRIBUNAL & ORS reported in 2005 AIR SCW 2908. In the said judgment it has been held that in view of rapid growth and also in view of the decision taken by the Competent Authority to develop areas previously earmarked as residential zone as mixed

zones for residential, commercial, light industrial and other uses, it was unnecessary to permit demolition of structure even if it was constructed in contravention of the provisions of the Act or zoning provisions of previous master plan. We may, however, state that the main relief claimed by the petitioner in this petition is for seeking appropriate writ, direction or order on the State Government to issue notification appointing an Appellate Officer for the development area of Gandhinagar Township in accordance with the provisions of section 5 (1) of the Act immediately. The other reliefs are only incidental thereto. We have, therefore, considered the controversies involved in this petition vis-a-vis the relief claimed in the petition and also the provisions of law to ascertain whether the relief claimed by the petitioner can be granted. It is, therefore, not necessary for us to take into consideration whether in the facts and circumstances of this case, the ratio laid down by the Apex Court can be made applicable . Other judgments are on the same line, hence we do not propose to discuss them here.

14. Apart from what has been discussed above, the petitioner cannot be permitted to file litigation after the litigation. This is more so because the Government issued notification dated 9/10/2000 framing GDCR for Gandhinagar township and during the pendency of Letters Patent Appeal No. 110 of 2001 the petitioner decided to approach the Competent Authority by

filing application under GDCR and she withdrew the petition and the Letters Patent Appeal for that purpose. She filed the application but failed. That should have been the end of the matter, but she again approached the designated authority under the Act and commenced another round of litigation. On this count alone the petition deserves to be dismissed.

15. In view of the above, we do not find any merit in this petition and the same is hereby dismissed. Rule discharged. We also direct the concerned respondents to take appropriate steps forthwith for removal of the unauthorized construction.

Misc. Civil Application No. 68 of 2005 :

16. So far MCA filed by respondent no. 4 is concerned, it is prayed therein that the Court may initiate appropriate proceedings under the provisions of the Contempt of Courts Act for holding the opponents guilty of committing contempt of the Court for deliberately not complying with the direction given by the Court to remove the unauthorized construction/development of the petitioner. It is averred in the application that the Division Bench of this Court has specifically observed in its judgment dated 7th July, 2004 that if the authorities upon considering the application of the petitioner dated 2nd July, 2004 found that the development was unauthorized and it was not required to be regularized, it should remove the same forthwith. He has further averred that on

23rd June, 2004 also Division Bench of this Court had passed order wherein it was made clear by the Court that pendency of the petition would not come in the way of authority in taking action against the petitioner.

16.1. It is submitted by Mr. RM Chhaya and Mr. HL Jani, learned advocates for the GUDA and the State that the petitioner had been filing the legal proceedings one after the other, either before the Court or before the authority and since the proceedings were being entertained, the authorities found it difficult to remove the development when the matter was sub-judice. They have further submitted that there was no intentional or deliberate flouting of the Court's direction. It is also submitted by them that the present applicant [respondent no. 4] has unnecessarily joined all the opponents in this proceedings when the Division Bench had specifically referred to respondent no. 3 – Collector to take steps for removal of the unauthorized development. They have further submitted that none of the opponents has filed any affidavit or made false statement before this Court with a view to misguide it. They have, therefore, submitted that the application be rejected with costs.

16.2. So far Mr. Patel, learned advocate for the petitioner is concerned, he has submitted that the respondent no. 4 has oblique motive and for that very reason he has been filing these proceedings. He has stated before the Court that the sole motive of respondent no. 4 to extract money from the petitioner even

when he has been adequately compensated by the petitioner. He has also submitted that there is recording of the conversation between the parties, which clearly reveals the oblique motive of respondent no. 4. However, we have made it clear to him that we will not entertain any such controversy, hence no further arguments have been advanced on this line.

17. Having considered the contents of the application as well as the rival submissions, it clearly appears to us that there is no deliberate attempt on the part of any of the opponents of the application to mislead the Court by making false statement. May be that due to inadvertence some inaccurate fact may have been stated, but that would not mean that any intentional false statement has been made so that the Court may be misled to pass order which may ultimately benefit the petitioner. The events recorded earlier without any doubt show that at all stages the petitioner has suffered set-back. Had the concerned authorities any intention to help the petitioner for whatever reason, that could have been done when the proceedings were pending before such authorities. No such attempt has been made. Even the application submitted by the petitioner on 2nd July, 2004 has been rejected. All the opponents are responsible Government officials and when their bonafides seem clear on perusal of the record pertaining to the proceedings that were pending before them, it is difficult to believe that they would make false statement in the

proceedings before the Court and in particular before this Court when they are well aware the consequences thereof. In view of the same, we do not accept the contention of respondent no. 4.

17.1. So far the allegation with regard to deliberate flouting of the Court order or directions is concerned, the submissions made by Mr. Jani as well as Mr. Chhaya are required to be accepted. It is true that so far Division Bench is concerned, in its judgment rendered in Special Civil Application No. 3087 of 2001 dated 7th July, 2004 it has been observed by it that if the authority upon deciding the application found that no relief could be available to the petitioner [respondent no. 4 of that case], the authority shall see that the said unauthorized construction is removed immediately subject to the order of the Appellate Authority. The direction was, therefore, vis-a-vis the concerned authority, which could either be respondent no. 2 or respondent no. 3. However, in the present application, others have also been implicated for reasons best known to respondent no. 4. As stated earlier, to challenge the decision of the authority made on application dated 2nd July, 2004 the petitioner preferred Regular Civil Suit before the Court at Gandhinagar wherein application at Exh. 5 was also filed for the purpose of obtaining stay. It further appears that in the said civil proceedings notices were issued to defendants of that case and they were called upon to produce necessary material to oppose the application for grant of stay

of the order under challenge in the said proceedings. Even subsequently in the Misc. Appeal No. 33 of 2005 which was filed to challenge the rejection of application at Exh. 5 by the petitioner and others, the notice was issued to the defendants of the suit and their advocate was also heard and the material produced by them including the written statement to the suit was also taken into consideration. The record shows that even Division Bench of this Court vide its order dated 3rd April, 2005 had directed expeditious hearing of Exh. 5. Considering all these circumstances and when the dispute or the issue was under active consideration again before the judicial forum, it is possible that the concerned authority may not have proceeded to remove the unauthorized development as that may have given a cause to the petitioner to agitate before the forum that such step was taken with a view to frustrate the proceedings and to deprive the petitioner of her legal right. It would also be kept in view that normally when the issue is under active consideration of the competent Court of law, even as a matter of propriety, such drastic action is not being taken by the authorities. In view of it, it appears to us that there is no deliberate flouting of the Court's direction by the opponents of this application. We also see some substance in the submissions made on behalf of the opponents that this being an application to initiate proceedings under the provisions of the Contempt of Courts Act, a definite allegation is required to be made against particular person or persons and to show in what manner he or they have deliberately flouted the

direction of this Court. It is, therefore, for respondent no. 4 to specify in detail what is the power and authority of all the respondents and what is their duty and to what extent they can exercise these powers. In other words, it has to be specifically averred and shown by him that it was the duty of all the opponents to remove the unauthorized development of the petitioner and tat duty they deliberately did not perform with a view to flout the direction or order of this Court. The respondent no. 4 has failed to fulfill this requirement. It appears that all the opponents have been joined in this application solely with a view to pressurize them to see to it that the construction in question is removed. Any such application with such uncleaned motive at-least against the concerned opponents has to be viewed strictly. We could have saddled him with the cost of the opponents but since except respondents no. 1 to 3 nobody has chosen to remain present, we do not propose to do so.

In view of the aforesaid, the petition as well as this application are dismissed. Rule discharged.

[Kshitij R Vyas, J.]

[Akshay H Mehta, J.]

* Pansala.